

**BUTTE-SILVER BOW LOCAL GOVERNMENT  
STUDY COMMISSION**

**Minutes of the Meeting  
October 13, 2005**

**Butte-Silver Bow Courthouse, First Floor Conference Room**

**Meeting Date:** October 13, 2005

**Time:** 5:30 p.m.

**Place:** Butte-Silver Bow Courthouse, First Floor Conference Room

**Call to Order:** Chairman Bob Worley brought the meeting to order at 5:36 p.m. and called roll with the following results:

**Members Present:** Ristene Hall, Tony Bonney, Wayne Harper, Dave Palmer, Meg Sharp, Northey Tretheway, Bob Worley

**Excused Absences:** Cindi Shaw, Ron Rowling, Shag Miller

**Approval of Minutes:** Minutes from October 6, 2005 approved with corrections. Wayne moved and Meg seconded.

**Comments from Ron Rowling:** No comments.

**Citizen's Comments:** None.

**Items not the agenda:** Yesterday Bob Worley attended the meeting with the police commission. Bob Worley stated that it went quite well and it was well received. They do not have an opinion regarding an appointed sheriff versus elected. Bob stated that a couple of them would be more than happy to attend one of their meetings and answer any questions they might have. They visited about a volunteer force and they felt Butte could use something like that. Bob stated that they do understand the problem with the union contract with the Butte Police Protective Association. They also discussed a contract with new officers that they are hiring and would like to discuss this with John Walsh. Sheriff John Walsh is going to be getting with them to discuss this issue because Butte is losing officers at a high rate. BSB trains these officers and sends them to school in Bozeman, purchases a gun, vest and badge for them. A lot of money is spent on training. Bob stated that two years down the road they leave BSB and go some place bigger and better because they get paid more money. After the police commission discussed this, they picked up an officer out of DeerLodge, Anaconda, Beaverhead County, and Jefferson County. Bob stated it seems like a thing where the officers from the smaller counties go to the bigger ones. They had a list of six officers that they sent to John Walsh and interviewed officers a week ago. It looks like there will be a couple of people appointed out of that group.

Northey Tretheway asked if they are still netting out to the same number they were talking about? Bob Worley replied that they were not sure what number they were heading for. Bob Worley thought it was somewhere around 13 to 14 officers short. Northey replied there were 39 and he was trying to get to 62. Bob Worley replied that he was not sure if he was trying to get to that high of a number. Bob Worley mentioned when they spoke about the volunteer force, they could see some real positives. They also brought up that some of the people that get involved are probation and police officers. It helps to develop a pool of candidates for the police force itself. They had thought it was a good idea and will have to wait to see where it goes.

Bob Worley commented that Tuesday, Dave Palmer and himself were interviewed by the Western Regional Institute of Community Oriented Public Safety. Dave commented they spoke a lot about the volunteer police force. Instead of having people come in and file reports at the police station, a volunteer could go to

the person's house and do the report. If there were a need for that person to call an officer down then they would do so. This would free up the officers more.

Bob Worley commented that the lady who interviewed him spoke about the volunteers being able to perform administrative tasks for the police officers.

Bob Worley spoke with Bob McCarthy regarding which charter version was correct.

Bob Worley commented that he and Jennifer Rozinka had both tried to get in contact with Mary McMahon to get information from her regarding the number of commissioners, redistricting and the GIS position and County Superintendent of Schools.

Tony Bonney made a comment about Bob Worley requesting Bob McCarthy to attend the Study Commission meetings. Bob Worley replied that he spent 30 minutes visiting with Bob McCarthy the other day about him attending so he could answer questions they have about the charter. Bob McCarthy told him that he was not sure if he would be able to attend tonight's meeting but would start to attend the meetings thereafter.

Bob Worley started the review of Section 4.02 Powers and Duties of the Chief Executive and adding a section to it.

Northey Tretheway commented that the Chief Executive setting goals is the right way to go just as he has to have the budget approved or reviewed by the council. Northey Tretheway asked should that same sort of event be taking place with these goals. Northey Tretheway stated the reason he brings that up is because they have been talking about the benefit of a manager form of government versus Chief Executive. Northey Tretheway stated this does tie together some of the goal setting that needs to take place for BSB. Northey Tretheway thought there needs to be some oversight on the parts of the goals that are being set. Northey Tretheway asked if the Council of Commissioners approves the budget?

Bob Worley mentioned he marked that they went through part (k), the restrictions of the Council of Commissioners. Bob commented that they talked about part (d) and adding who presides in the absence of the Chief Executive. They thought there should be a chain of command if the Chief Executive is not present. Bob asked if the Chief Executive is not present then the Chairman of the Council is next in line? Bob asked Dave Palmer who it would be after that? Dave Palmer replied it is the Chief Executive and then the Chairman of the Council, then the Vice Chairman of the Council, then the Chairman of the Judiciary and then the Chairman of Finance and Budget.

Bob Worley asked after the Chief Executive would it be the Council Chair?

Wayne suggested having the language read something like the presiding officer for all will be the Chief Executive, if the Chief Executive is not present then it would go by the adopted rules of the Council of Commissioners.

Bob Worley asked if they would need to add after that; the council would follow its adopted rules of the commission to affect chain of command?

Northey Tretheway suggested stating it as if the Chief Executive is unable to attend the council will employ the rules...

Toney Bonney suggested where it states the Council of Commissioners shall be the Chief Executive maybe add something that says or rules of commission.

Wayne Harper replied or designate in his absence pursuant to the rules of the Council of Commissioner but then you go to who shall decide all tie votes...then he would put if the Chief Executive is unable to preside, the presiding officer shall be whatever the Council of Commissioners rules say or adopted rules say...

Bob Worley replied that the language be, if the Chief Executive cannot preside, the adopted rules of the commission shall govern. Bob Worley asked if that sounded all right with everyone.

Bob moved on to section 4.01 Chief Executive, Parts

- (a) qualification
- (b) term

Wayne Harper asked if they are doing it too often and if it is held every six years, do you think it would save money and give people more time to get their program going? Northey Tretheway commented that he thought the same thing but thought if they put six in there and got an incompetent person in office...

Bob Worley commented if they have a qualified Chief Executive that is getting the job done, he is probably going to be elected again.

Ristene Hall replied there are not term limits so she thinks four years is good.

Dave Palmer suggested as long as it was brought up they could stagger the terms to a five-year term, an odd term. That way it would alleviate any concerns the commissioners have except every ten years barring them from running for election if they have to run for their council.

Bob Worley replied the only thing about holding a five-year election would be the fact that it probably be the only person, the Chief Executive that you would be electing at that time.

Meg Sharp replied that you have to have something because the congressional, every two years you have to have a congressional election so an even number seems more logical.

Bob Worley asked if everyone approved of a four-year term. All were in favor.

Dave Palmer commented as long as they were discussing the Chief Executive, before they got too far, maybe they should decide amongst themselves if they are going to look at a city manager versus a Chief Executive. If they decide a City Manager then it is a waste of time to go through that section.

Northey Tretheway commented that if you tie enough links together, you could still have a Chief Executive that acts like a City Manager.

Bob Worley asked that he would be elected but would be more answerable to...

Northey replied if you say that the Chief Executive has to do the budget and it has to be approved by the Council, the Chief Executive has to set goals and objectives but it has to be reviewed and approved by the Council. You are getting the same effect but without all of the turmoil that you would go through with a City Manager.

Dave Palmer commented that an elected person is the way they should keep it.

Tony Bonney replied that he did not believe the voters would approve a city manager. He stated that there are good points but the voters would not turn over the option of their control to anyone else.

Northey Tretheway replied that it does have its strong points but there is really no discerning difference in cost or efficiency of government between a City Manager and one that has an elected Chief Executive.

Tony Bonney asked if Helena has a City Manager and elected Mayor. Tony asked if that was the system they were running?

Wayne Harper commented that there is a huge downside in his opinion on the professionalism side and it is unbelievably visible when you look at the Superintendent of Schools when you get a real good one and he

thought Pete Carparelli was a good one. He makes \$42,000 more in Billings and currently he is out of Billings because he could make even more in Denver. The Chief Executive is usually a local and he supports that because if you hire a professional he is going to want to leave Butte to go to some place like Billings and then leave Billings to go to Spokane and so forth. Wayne continued to state to get those professional kinds of people, they will say all the right things in an interview and will be qualified and capable of performing the job but they are all planning on being in Butte for three years and then moving on. Meg Sharp replied that Butte is a stepping-stone. Wayne Harper stated that he does not care who gets elected, Paul Babb, Jack Lynch, Judy Jacobsen, they all cared about Butte and are citizens of Butte. There is a lot of personal issues in it instead of community. Wayne stated he is a strong advocate of elected and felt Tony nailed it when he said that they are not going to get the vote of the people.

Bob commented that one of the advantages of having an appointed one; they talked about this that the average stay is 5 years of an appointed City Manager. Bob commented that the learning curve is a lot less steep for somebody coming in that has the ability, knowledge or has been trained to be a City Manager versus someone who is elected who has to stumble through 6 to 9 months to get things done. Bob agreed that BSB is probably not ready for a City Manager. Bob stated that he has watched some of these City Manager things go on in the state, in Billings, and they have a war going on over there between the City Manager and the Chief of Police. Bob thought that Bozeman has also had their share of problems with their type of government. Bob thought that Anaconda would probably hire a City Administrator. Bob thought if they threw too many things at the voters that they advocate for a City Manager, the people are going to question where are they coming from?

Northey agreed that they do not want to go with a City Manager versus an elected Chief Executive but if they do see that there are some advantages to a Manager position, what can they do? They are responsible to the commissioners that you can interweave the Chief Executive and the commissioner so they are getting the best of both worlds without throwing the elected Chief Executive out the window. Northey felt strongly that they could do that.

Bob stated that an advantage is the City Manager is under contract so if he does not perform there is the possibility of a replacing him. Bob asked Wayne if that would lead to a lawsuit?

Wayne Harper replied that it could. Wayne stated that it is usually buyout and it really adds to it. There is tortuous interference with a contract; there are good faith fair dealings. Wayne commented that the contract employees could be more trouble than for cause employees in regard to lawsuits. Wayne stated that it is a cleaner deal. Wayne stated that there are guys that would rather say they resigned than got fired.

Ristene Hall commented that they stick with the elected position but take the pros from the appointed manager and tie it into the powers of the Chief Executive so the citizen's of Butte could get best of both worlds.

Northey Tretheway replied that they do want BSB to set some high level goals and the council to dive into the issues of policy and legislation. Northey asked how do they make them get out of the dirt and get into the concepts of what makes Butte better? How do we get them to start setting goals?

Dave Palmer replied one way is to do it with the goals and when the Chief Executive is elected, his first order of business is to set his goals for the following year and for his four-year term. Dave continued that it is in conjunction with working with the Council of Commissioners. The commissioners will do the judging of how that is done. They make sure that some of the goals are the streets are going to be improved in the first year. Then it is up to the Chief Executive to do what the Council spends a lot of time doing which is to make sure the streets are improved. At the end of the year, the council will rate him. You could change, under removal of office, that if he is not meeting his goals by  $\frac{3}{4}$  of a vote, not a simple majority of the council, he could be removed.

Bob Worley talked about annual goals and they might not want to make this too intricate but they might want to look at one, two or four year goals.

Tony Bonney commented that he thinks they see that in the State of The Union Address of what they are going to do before the next four years comes out whether it gets done or not. He thinks by adding that into the charter if they say they are going to clean up the streets and they don't...everyone sets out goals. Things don't always work out the way they should. He did not think that they should put in there that if the streets are not clean or if the Chief Executive's first goal is not met within a year that he could be removed. Other priorities and situations come up and if they lock someone into that it could cause more problems.

Dave Palmer replied that Tony has a good point but it is putting the pressure on the Chief Executive to do exactly what the council has been doing. The Chief Executive is the one setting this goal and if he wants to be grandioso and say he is going to improve every street and he could come up with a percentage of the streets that have been improved. He is in charge of the Department Head of Public Works. If he wants to keep that PublicWorks Director working all he has to do is tell him. The Chief Executive is not going to go in like he does in a campaign and say I'm going to take care of this problem and that problem. He is going to make sure they are attainable goals.

Ristene Hall agrees and would like to see him set goals but as far as getting the power to give it to the council to remove him from office, she is not sure if council should have that power. Ristene stated that the people put him in and the people could impeach him. Ristene stated that she thinks the people have the power but not the council. However, the council could make him respond to the people as to why he has not fulfilled his duties.

Wayne Harper agreed with Ristene. He thinks Northey's track is the right track. You set your goals and are judged by the council. If nothing else, the council on an annual basis will have these goals -come up for vote. The community could starting hearing that two percent or 98%, four years from now they can make that decision if they are going to keep him or not. Wayne believes it will open the electorate eyes.

Northey agrees and does not think the council could remove the Chief Executive but the council could use the information from goal setting to publicize it.

(End of tape one, side one)

Northey commented that the council is almost like the Board of Directors to some degree and you have the Chief Executive, who is the head of the company, who has the policies and goals of the board that that person has to please otherwise he is out the door. Northey stated if they are talking about an open government and where money is going, there is nothing better to then to have something that sets the goals and at the end of the period show the citizens by publishing it in the paper. Northey stated that there would be some good fighting between those people and that is what you want to have going on.

Wayne Harper commented that you will always have the opportunity in an open forum to say, for example, your right, I did not get anything done on Front Street you guys remember the flood and the priorities switched and took care of that priority that nobody saw coming. The Chief Executive would have to explain why a certain goal was not met.

Bob Worley replied that things could change. You can set goals and things can change that take one's presence away from a primary goal. For example, maybe there was a major problem on Front Street and they could not get to fix all the potholes but he would need to have a legitimate explanation. Bob also agrees that council should not be able to remove the Chief Executive.

Wayne Harper made a motion that they as a commission let the electorate know that they are going to go forward with the charter and still have an elected Chief Executive. Ristene Hall seconded.

Chairman Bob Worley brought the motion to the floor and all were in favor.

Bob Worley believed that the goal section should probably be in Section 4.01? Members thought it should go in 4.02, Powers and Duties.

Bob Worley reviewed part (c) vacancies.

Ristene Hall asked if that is telling them that they do another thing other than put in the Vice Chair on the chain of command?

Northey Tretheway replied that he thought it was leaving that option open.

Northey Tretheway asked for example if Paul Babb was not able to serve tomorrow, what would happen?

Dave Palmer replied that the Chairman of the Council acts as the Chief Executive for those sixty days.

Northey Tretheway asked how do they decide whom to appoint? Dave Palmer replied that people apply. Typically the council takes applications from the public and whoever wants to apply applies and is interviewed by the council. Northey asked where does it say someone has to apply? Bob Worley read from the charter that it states, within the City-County for at least one year prior to applying. That person is only elected for the remainder of that term. Northey Tretheway asked if a council member could apply. Dave Palmer replied yes he/she could.

Chairman Bob Worley reviewed parts: (d) forfeiture  
(e) removal  
(f) compensation

Northey Tretheway asked how does that ordinance read? He asked if they set it every year? Dave Palmer replied it comes up every year.

Bob Worley commented that there are other offices that are percentages of what the Chief Executive makes for example, Bob McCarthy makes 95% of what Paul Babb makes. Meg Sharp replied that part of Bob McCarthy's salary is paid by the State of Montana. Dave Palmer replied that it is spelled out in the same ordinance.

Chairman Bob Worley moved forward to review Section 4.02 Powers and Duties of the Chief Executive.

Parts: (a) The executive and administrative power...

(b) The Chief Executive shall:

1. enforce ordinances...
2. perform duties...

Northey Tretheway asked if it needed to be stated in the charter that they set it? Bob Worley replied that he did not see anything where it says that. Northey Tretheway replied in addition to the Chief Executive, they are also setting the salaries by percentages and who sets the salaries of those that are not set by percentages?

Bob McCarthy replied that the county paid a lot of money to have salary study done and they recommended a range of salaries for nearly every position. Now, even ten years later, BSB employees are not getting paid what was recommended. Bob McCarthy stated that BSB substantially under funds its employees in comparison with other communities but starts at the top under funding them. Bob McCarthy stated what the answer is, BSB paid a lot of money to have a range of salaries established through the Personnel Office and they don't pay attention to it. Bob McCarthy mentioned Yarger Decker, a personal management consultants, who presented a plan to council. Bob McCarthy backed up and explained what happened. Bob McCarthy explained when the city and county merged in 1977; there were two different systems of compensation for people who were not in the craft trade unions. People who were not in the craft trade unions get paid according to union scale. They make more here than they do in other places. People who are not in trade unions and who work for Silver-Bow County belong to a municipal labor organization called MPEA (Montana Public Employees Association). People who worked in non-trade union positions for the city of Butte belong to the teamsters union. There was a strike in Winter/Spring of 1978 over representation. The MPEA won the right to represent employees in the government who are not part of collective bargaining agreements with craft unions. For a period of 15 years or more, the union

employees who did not belong to the craft union were represented by the MPEA. Those employees after a while became very dissatisfied and moved to an affiliate of the AFLCIO. Bob McCarthy stated that he does not know who is representing them now. That is one class of persons. In addition, there were a number of people who did not belong to any collective bargaining association. For the most part, they worked in this building and also worked on the second floor in the Budget Office and MIS and those positions were also found by Yarger Decker to be substantially under compensated. Bob McCarthy stated that there was a lot of dissension over the pay scheme that employees who were not in craft unions were receiving and that goes on to this day. The employees of this government who do not belong to craft unions are very dissatisfied with their pay. They know what Yarger Decker says; they saw it 10 years ago and have seen it today. They know they are being under compensated. The 1996 amendments provided for a Personnel Department. The 1976 charter did not provide for a Personnel Department. The 1996 amendments require a Personnel Department. Bob McCarthy made a reference to Section 11.04. Bob McCarthy explained what they did was pass an ordinance that states we have a personnel system and employment policy. There is nothing in it. Bob McCarthy stated that they have not done anything in 30 years.

Ristene Hall asked Bob McCarthy if BSB is not paying them because they don't have the money to pay them or is there is money to pay the employees the wage that they should be getting?

Bob McCarthy replied that they don't get paid because we don't levy for it and it is not in the budget. Bob McCarthy stated whether or not we could levy for it is a different question.

Dave Palmer commented to Bob McCarthy that he thought the question had to do with how the elected officials salaries are set by ordinance but does it have to be in the charter giving the council the permission to set by ordinance the elected officials salaries?

Bob McCarthy does not think that the charter has to say that elected officials salaries have to be set by ordinance but that is how they are set everywhere, by ordinance. So whether it is or is not in the charter, he thinks the elected official's salaries will have to be set by ordinance anyway.

Meg Sharp asked if that is within state law?

Bob McCarthy replied no. State law is silent on how salaries will be set except that they will be set by the governing body. State law for counties, on the other hand, states that there will be a local salary commission and it says who will be on it. The local salary commission is to come up with salaries for local county elected officers and it applies to 54 counties, the only two counties that it does not apply to are BSB and Anaconda/DeerLodge. His understanding is since the salary commissions were created; local salaries have tended to go up.

Bob Worley commented since the ordinance takes care of that he asked Northey if he was all right with that section. Northey replied that he was but his question after listening to Bob McCarthy was is there a need for something like a commission within this county?

Bob McCarthy replied that BSB employees would like it. Bob McCarthy continued to explain because BSB is self-powering government that is considered to be something that can be included within a local charter. The local charter simply says that salaries will be set by ordinance. If you wanted to have a local salary commission, you could put that in there but as it stands right now you do not have to.

Dave Palmer asked if the charter states salaries would be set by ordinance.

Bob McCarthy made a reference to Section 5.02 (f) in the charter. Bob McCarthy stated they are in the process of doing that right now. They passed the budget the first Monday in August and after the budget is passed the salaries are determined and then an ordinance is drawn up. It takes about two months to pass the ordinance and then it takes another month before it is effective. The ordinance is generally effective sometime around the 1<sup>st</sup> of November and that is where they are right now.

Northey Tretheway asked does the council ultimately approve the salaries of non-elected employees?

Bob McCarthy replied that they approve every labor agreement but as far as people who are not in a labor organization and are not an elected officer that is probably approved in the budget resolution. Bob McCarthy stated that he knows nothing is presented to the council. It is part of the personnel system. There is nothing in the charter that it has to be approved by ordinance. There is nothing anywhere that refers to how they do that so his thought is that is part of the budget resolution.

Tony Bonney believed when Yarger Decker came out it was designed to be a guideline. Tony stated that he knows the union was against it because two of the states that were involved in the survey when they did it. He believed there was a three or four state survey on it and two of them were right to work states. It lowered the union down and raised the non-union employees up and that is what caused the concern.

Ristene Hall asked could the non-union employees join the union? Bob McCarthy replied that he thought there was a great danger with that. Ristene Hall asked what would be wrong with that?

Bob McCarthy replied it would probably cost more. Bob McCarthy stated it is not over. If you talk to the employees, they do not like it.

Ristene Hall asked what would be right, what is right in it?

Bob McCarthy replied that even the most sainted people are looking for their own self-interest. Bob McCarthy commented if they asked those people who should benefit in that review of the personnel study, they would say they should. Bob thought that is what was going on with the whole issue. Bob continued to explain in the Yarger Decker study, the people of the trade unions said they were over paid and the people that were not, they said they were underpaid and that is a fact. Immediately everyone that was in the trade unions all objected to it. Those were dictated by collective bargaining units, which are in place throughout the area. There are no positions where jurisdiction has been claimed by trade unions demanding that be continued. He stated that there is not one person in the room that would want to see that change.

Bob Worley asked if everybody employed by BSB is covered by MPEA?

Bob McCarthy replied that there are several different pensions administered by MPEA. The police officers have a separate pension under the municipal police law that is administered by MPEA but it is a separate pension. The fire fighters have a separate pension that is administered by MPEA but it is a separate municipal firefighters pension. Bob McCarthy stated that the judges are in a pension that is administered by MPEA but it is separate pension and was not sure if anyone else...Bob stated that there were more than 30 pensions that are administered. Everyone else is typically referred to as MPEA.

Bob Worley replied there are a lot of people covered by MPEA and also by union contract retirement. Bob Worley commented that they, as taxpayers in BSB, are funding two retirements for employees.

Bob McCarthy replied they have been doing that for more than 40 years, since the 1960's.

Northey Tretheway commented that it sounds like there is some dissatisfaction with the way things are going now and there is a procedure in place in regard to setting salaries for non-elected people but asked if they need to go further to help remedy some of that?

Bob McCarthy replied that the deficiency is in the way the council has responded to the section he read earlier. All they did was comply with the minimal requirements of the charter amendment which states that they shall by ordinance establish a personnel system and employment policy. Bob McCarthy stated that they have not really done that. Bob McCarthy stated that he does not know exactly what happened when the charter was adopted. There were a lot of things going on at that time. Bob McCarthy stated what he thinks was most significant was what the Montana legislature did in enacting the deregulation law which ultimately led to the break up of Montana Power. When the mine closed on June 30, 2000, everybody knew the effect that was going to have. There was going to be a huge decline in tax revenue. There were



no raises given until the mine opened again in October of 2003 and did not have an effect until 2004. Bob McCarthy stated what he thought the answer to the question was that they always seem to be on the tail end at the wrong economic cycle. The commissioners should by adopting a personnel system that is more than just something where they can claim they adopted the amendment. Bob McCarthy believes the charter is ok unless the Study Commission wants to strengthen it.

Northey Tretheway replied that he is hung up on this because it talks about council shall be the legislative and policy determining body. Northey asked that is the policy they should be focusing on and is wondering if there is any liability by not abiding with what is stated in that section ...

Bob McCarthy replied that it is clear they have not complied with it. Bob McCarthy gave an example that there have been more unfair labor practice complaints that come out the Law Enforcement than the rest of the government combined. Two reasons for this is one it is a high stress area. It is a 24 hour, seven days a week operation. It is an area of concernation not only here but in other communities as well. However, the other communities realize that there is going to be conflict in these people's lives. The positions themselves cause people to have anxiety and stress and they recognize this by having someone assigned to work there. These are difficult positions, they are under stress, they see difficult situations such as injuries to children and there is nothing worse than to see a child injured or neglected. It has an effect on the officers and causes a domino effect. They need a personnel person in the Law Enforcement Department. BSB has paid more money in the Law Enforcement Department because nobody wants to pay attention to people. Bob stated that is one example. Bob McCarthy stated that the Personnel Department is so undersized that there is not enough being done to help the employees. Bob McCarthy felt a lot of things could be solved. Bob McCarthy changed the subject and commented that NorthWestern has a great Personnel Department. They have training; they have provisions and gave employees advice on a lot of things such as debt and family issues. This increases loyalty among employees, which results in greater productivity. Great Falls and Helena do this. Bob McCarthy thinks BSB should be doing something like that. Bob McCarthy stated that is an area where we cause problems ourselves because and cause employees to file grievances and cause employees to go to the Human Rights Commission.

Bob Worley made a note of Law Enforcement having a Personnel Department.

Ristene Hall asked in regard to the employees joining the union is that the department heads we are talking about? Bob McCarthy replied that it is more than the department heads. There are employees who are not union or a part of it. Ristene Hall asked if that affects the Chief Executive being able to appoint when they belong to a union?

Bob McCarthy replied that BSB has an employment system that complies with state and federal law to make certain there is no discrimination. The Chief Executive appoints down to the level of department heads. Below that, the positions are advertised through Job Service. Bob McCarthy stated that one has to be really careful not to discriminate against minorities and gender. Bob McCarthy stated there are more complaints filed over gender discrimination than anything. Bob McCarthy stated the answer is the positions are to be filled on the basis of qualifications recognizing if there are parts of the population that are under represented, you may have to select someone from there. He is not talking about affirmative action, he is talking about making certain if someone applies who comes from a particular sub-group and is qualified. If you talk about a person who is most qualified that is easy but in a lot of these positions the testing is not so sophisticated. People end up being qualified or not qualified and within the group of people that qualified you have to make certain that you are not subject to discrimination on the basis of race or other things.

Tony Bonney asked does it affect the ability to remove them? Tony thought by being in the union himself that it does affect it because each negotiated union contract has its own procedure and steps on how someone can be removed rather than just walking in and saying your fired. There is an established procedure in every negotiated contract. If the non-union employees were now allowed to unionize they would negotiate that step. Tony asked Bob McCarthy if that was correct.

Bob McCarthy stated that historically has always been the case and there was a substantial difference to being subject to a collective bargaining agreement and how you could be disciplined or terminated. Bob McCarthy stated that nobody in Montana could be fired at will anymore. That means everybody can only be terminated for cause. The union agreements still provide greater protection than just being in a position where you could only be fired for cause. That is because the unions take an advocacy position with regard to their employees. They will typically hire lawyers so it goes one step further into the law.

Ristene Hall asked why the charter was not changed when the law changed?

Bob McCarthy replied that the law changed in 1997 and the last charter change was in 1996.

Ristene Hall asked if there was a step for council to change it. She asked what was the procedure to change it?

Bob McCarthy replied the only the voters can.

Dave Palmer made a reference to Section 3.03 (j). Dave asked if they could include in there if state law changes the meaning of the charter could it be changed at that time by the council without the vote of the people?

Bob McCarthy replied yes and no. Bob stated that reason that is in there is because in 1976 the charter was written in great specificity with respect to all local offices. Bob stated that is unusual and BSB's charter is much more specific than most charters are. One of the offices was named Police Court and Police Judge. It was approved in 1976 and became effective in 1977. Before it became effective, in legislative session of 1977 the legislature changed the names of Police Court to City Court. From the very first day we had Police Court when it did not exist anywhere else in Montana. This would have allowed that to be changed. That is one example.

(End of Tape 1, side 2)

Bob McCarthy stated that other charters are written in more broad terms granting authority and that it is the local governing body that enacts regulations, ordinances and resolutions, which implement that. That is what a model charter would like.

Bob Worley asked if they went back just a little bit and had the commissioners adopt the change that was affected by the Wrongful Termination Act "serving at the pleasure of" been avoided?

Bob McCarthy replied probably not and thought the problem is that the charter is too specific on the removal or termination. The legislature or the courts might change any kind of this stuff. It would be his recommendation that it simply say it is done in accordance of state law because this is an area that changes.

Tony Bonney referenced to part (j) if they were to add something in there that gives the council the right to do that if state law changes it?

Bob McCarthy replied it is a thought.

Bob Worley thought there was still a feeling that "serving at the pleasure of" is still something they would like to see in the charter. They still feel the Chief Executive needs the authority in order to appoint the department heads that he wishes to work with.

Bob McCarthy replied that the Montana Supreme Court states that the Montana Constitution prohibits that. Bob Worley clarified that the Montana Constitution prevents the firing of that person without just cause.

Bob Worley asked if they could do something where they retain that person at 90% of his/her existing salary.

Bob McCarthy replied that he thought there were other provisions that come into play with the whole business of discrimination. The whole area of labor law is involved there. If what they wanted to do was take someone who is a manager and make someone else a manager in that particular department and you weren't going to cut the salary of the person you were removing and you weren't going to take them from a position of substantial authority and send him/her out cleaning toilets, you simply changed the position, he thought they could do that and that it is a management right. Bob McCarthy stated part of the problem is that a lot of things don't have real absolute answers.

Wayne Harper commented that the Wrongful Discharge Employment Act states any adverse employment decisions. It does not say you are terminated. Termination is the ultimate. Wayne thought that they have the words "at the pleasure of" but they could also have something that says once you are the Chief Executive your only legal council is the County Attorney.

Bob McCarthy replied that they have had cases within the Law Enforcement Department where people were reassigned to positions and they filed grievances and then went to the human rights commission and the county ended up losing. People were fired. The school district has a worse case than we do. The school district has had numerous cases where they select someone for a position and someone else will grieve it and will rule against them. Bob McCarthy stated that there is no rhyme or reason to it. It is a complicated area and you have to be cautious and have people who really know what they are doing. They are trained in the area of personnel and they have to keep up on the training. It is an area that requires specialization.

Tony Bonney commented if they amended the charter to say if state law changed in any way it would give the Council of Commissioners the ability to change that without amending the charter. He thought if they were looking at changing that because employment law does change all the time as well as other laws and if they do change, they do not need to wait for the charter to be reviewed or amended. It gives them the ability to change it in accordance with state law. Wayne agreed with Tony and thought they should try some language like that.

Northey Tretheway asked if Section 2.01 covered some of that.

Tony replied that it does not give the ability to change it in accordance with state law under that section.

Wayne Harper replied that language would work if they have a charter that is not so specific. Legally once you start getting specific there is a general rule.

Bob McCarthy replied there is some basic legal acts such as the later over the former, the specific over the general. Those are just general basic precepts that if the court cannot find anything else to use they will use that. Bob stated that specific provisions might cause trouble.

Northey Tretheway suggested that the language "at the pleasure of" be removed and also substituted with language that is in accordance with state law.

Wayne Harper volunteered to bring a draft of what language could work in part (j).

Bob Worley suggested that they let Wayne work on the language since he is familiar with law. Bob Worley felt they got the answers they needed to questions they had in regard to charter changes from Bob McCarthy.

***Date of Next Meeting:*** October 20, 2005.

***Adjournment:*** Wayne Harper moved and Dave seconded.